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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KEVIN AMINI, individually and on behalf of all others similarly situated, Plaintiff, vs. CLASSIFIED ADVERTISING VENTURES, LLC d/b/a SELLER NETWORKS and DOES 1 through 10, inclusive, and each of them, Defendant.) Case No.)) <u>CLASS ACTION</u>)) COMPLAINT FOR VIOLATIONS) OF:)) 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]) 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)])) <u>DEMAND FOR JURY TRIAL</u>
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Plaintiff KEVIN AMINI (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of CLASSIFIED ADVERTISING

1 VENTURES, LLC d/b/a SELLER NETWORKS (“Defendant”), in negligently,
2 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in
3 violation of the Telephone Consumer Protection Act, *47 U.S.C. § 227 et seq.*
4 (“TCPA”) thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. The Court has personal jurisdiction over Defendant because it
7 conducts significant business in this District, and the unlawful conduct alleged in
8 this Complaint occurred in, was directed to, and/or emanated from this District.

9 3. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because the
10 wrongful conduct giving rise to this case occurred in, was directed to, and/or
11 emanated from this District, Defendant, at all times, was targeting individuals in
12 this district, with telephone prefixes such as (714), which are in the Central District
13 of California. The calls were made with the intent to sell vehicles.

14 4. Defendant is subject to specific personal jurisdiction in this District
15 because it has continuous and systematic contacts with this District through their
16 marketing efforts and services that target this District, and the exercise of personal
17 jurisdiction over Defendant in this District does not offend traditional notions of
18 fair play or substantia justice. The Court has personal jurisdiction over Defendants
19 because they conduct significant business in this District, and the unlawful conduct
20 alleged in this Complaint occurred in, was directed to, and/or emanated from this
21 District.

22 5. Venue is proper in the United States District Court for the Central
23 District of California pursuant to *28 U.S.C. § 1391(b)* because the wrongful conduct
24 giving rise to this case occurred in, was directed to, and/or emanated from this
25 district.

26 **PARTIES**

27 6. Plaintiff, KEVIN AMINI (“Plaintiff”), is a natural person residing in
28 the County of Orange, State of California and is a “person” as defined by *47 U.S.C.*

1 § 153 (39).

2 7. Defendant, CLASSIFIED ADVERTISING VENTURES, LLC d/b/a
3 SELLER NETWORKS (“Defendant”) is an online company that sells vehicles, and
4 is a “person” as defined by 47 U.S.C. § 153 (39).

5 8. The above named Defendant, and its subsidiaries and agents, are
6 collectively referred to as “Defendants.” The true names and capacities of the
7 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
9 names. Each of the Defendants designated herein as a DOE is legally responsible
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
11 Complaint to reflect the true names and capacities of the DOE Defendants when
12 such identities become known.

13 9. Plaintiff is informed and believes that at all relevant times, each and
14 every Defendant was acting as an agent and/or employee of each of the other
15 Defendants and was acting within the course and scope of said agency and/or
16 employment with the full knowledge and consent of each of the other Defendants.
17 Plaintiff is informed and believes that each of the acts and/or omissions complained
18 of herein was made known to, and ratified by, each of the other Defendants.

19 **FACTUAL ALLEGATIONS**

20 10. Beginning in or around November 2017, Defendant contacted
21 Plaintiff on Plaintiff’s cellular telephone number ending in -8875, in an attempt to
22 solicit Plaintiff to purchase Defendant’s services. There was a significant pause
23 and sound prior to the Defendant trying to solicit its services to Plaintiff.

24 11. On November 10, 2017, Plaintiff asked to be removed from
25 Defendant’s call list. Defendant proceeded to call Defendant once again on
26 November 15, 2017.

27 12. Defendant used an “automatic telephone dialing system” as defined
28 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

1 13. Defendant contacted or attempted to contact Plaintiff from telephone
2 number (702) 781-8954 confirmed to be Defendant's number.

3 14. Defendant's calls constituted calls that were not for emergency
4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5 15. Defendant's calls were placed to telephone number assigned to a
6 cellular telephone service for which Plaintiff incurs a charge for incoming calls
7 pursuant to 47 U.S.C. § 227(b)(1).

8 16. During all relevant times, Defendant did not possess Plaintiff's "prior
9 express consent" to receive calls using an automatic telephone dialing system or an
10 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
11 227(b)(1)(A).

12 17. Plaintiff is not a customer of Defendant's services and has never
13 provided any personal information, including his cellular telephone number, to
14 Defendant for any purpose whatsoever.

15 18. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
16 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17 19. Plaintiff received numerous solicitation calls from Defendant within a
18 12-month period.

19 20. Plaintiff requested for Defendant to stop calling Plaintiff during one
20 of the initial calls from Defendant, thus revoking any prior express consent that had
21 existed and terminating any established business relationship that had existed, as
22 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

23 21. Despite this, Defendant continued to call Plaintiff in an attempt to
24 solicit its services.

25 22. Through this action, Plaintiff suffered an invasion of a legally
26 protected interest in privacy, which is specifically addressed and protected by the
27 TCPA.

28 23. Defendant's calls forced Plaintiff and class members to live without

1 the utility of their cellular phones by forcing Plaintiff and class members to silence
2 their cellular phones and/or block incoming numbers.

3 24. Plaintiff alleges upon information and belief, including without
4 limitation his experiences as recounted herein, especially his experience of being
5 called despite Defendant's lack of consent to call him, as well as requesting
6 Defendant to stop calling him, that Defendant lacks reasonable policies and
7 procedures to avoid the violations of the Telephone Consumer Protection act herein
8 described.

9 **CLASS ALLEGATIONS**

10 25. Plaintiff brings this action individually and on behalf of all others
11 similarly situated, as a member of the proposed class (hereinafter, "The Class")
12 defined as follows:

13
14 All persons within the United States who received any
15 solicitation/telemarketing telephone calls from
16 Defendant to said person's cellular telephone made
17 through the use of any automatic telephone dialing
18 system or an artificial or prerecorded voice and such
19 person had not previously consented to receiving such
20 calls within the four years prior to the filing of this
21 Complaint

22 26. Plaintiff represents, and is a member of, The Class, consisting of all
23 persons within the United States who received any collection telephone calls from
24 Defendant to said person's cellular telephone made through the use of any
25 automatic telephone dialing system or an artificial or prerecorded voice and such
26 person had not previously not provided their cellular telephone number to
27 Defendant within the four years prior to the filing of this Complaint.

28 27. Defendant, its employees and agents are excluded from The Class.
Plaintiff does not know the number of members in The Class, but believes the Class
members number in the thousands, if not more. Thus, this matter should be

1 certified as a Class Action to assist in the expeditious litigation of the matter.

2 28. The Class is so numerous that the individual joinder of all of its
3 members is impractical. While the exact number and identities of The Class
4 members are unknown to Plaintiff at this time and can only be ascertained through
5 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
6 The Class includes thousands of members. Plaintiff alleges that The Class
7 members may be ascertained by the records maintained by Defendant.

8 29. Plaintiff and members of The Class were harmed by the acts of
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
10 and The Class members via their cellular telephones thereby causing Plaintiff and
11 The Class members to incur certain charges or reduced telephone time for which
12 Plaintiff and The Class members had previously paid by having to retrieve or
13 administer messages left by Defendant during those illegal calls, and invading the
14 privacy of said Plaintiff and The Class members.

15 30. Common questions of fact and law exist as to all members of The
16 Class which predominate over any questions affecting only individual members of
17 The Class. These common legal and factual questions, which do not vary between
18 The Class members, and which may be determined without reference to the
19 individual circumstances of any The Class members, include, but are not limited
20 to, the following:

- 21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant made any telemarketing/solicitation call
23 (other than a call made for emergency purposes or made with
24 the prior express consent of the called party) to a Class member
25 using any automatic telephone dialing system or any artificial
26 or prerecorded voice to any telephone number assigned to a
27 cellular telephone service;
- 28 b. Whether Plaintiff and the Class members were damaged

1 thereby, and the extent of damages for such violation; and

2 c. Whether Defendant should be enjoined from engaging in such
3 conduct in the future.

4 31. As a person that received numerous telemarketing/solicitation calls
5 from Defendant using an automatic telephone dialing system or an artificial or
6 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
7 claims that are typical of The Class.

8 32. Plaintiff will fairly and adequately protect the interests of the members
9 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
10 class actions.

11 33. A class action is superior to other available methods of fair and
12 efficient adjudication of this controversy, since individual litigation of the claims
13 of all Class members is impracticable. Even if every Class member could afford
14 individual litigation, the court system could not. It would be unduly burdensome
15 to the courts in which individual litigation of numerous issues would proceed.
16 Individualized litigation would also present the potential for varying, inconsistent,
17 or contradictory judgments and would magnify the delay and expense to all parties
18 and to the court system resulting from multiple trials of the same complex factual
19 issues. By contrast, the conduct of this action as a class action presents fewer
20 management difficulties, conserves the resources of the parties and of the court
21 system, and protects the rights of each Class member.

22 34. The prosecution of separate actions by individual Class members
23 would create a risk of adjudications with respect to them that would, as a practical
24 matter, be dispositive of the interests of the other Class members not parties to such
25 adjudications or that would substantially impair or impede the ability of such non-
26 party Class members to protect their interests.

27 35. Defendant has acted or refused to act in respects generally applicable
28 to The Class, thereby making appropriate final and injunctive relief with regard to

1 the members of the Class as a whole.

2 **FIRST CAUSE OF ACTION**

3 **Negligent Violations of the Telephone Consumer Protection Act**

4 **47 U.S.C. §227(b).**

5 36. Plaintiff repeats and incorporates by reference into this cause of action
6 the allegations set forth above at Paragraphs 1-27.

7 37. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple negligent violations of the TCPA, including but not limited to each
9 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
10 *47 U.S.C. § 227 (b)(1)(A)*.

11 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
12 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
13 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

14 39. Plaintiff and the Class members are also entitled to and seek injunctive
15 relief prohibiting such conduct in the future.

16 **SECOND CAUSE OF ACTION**

17 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

18 **Act**

19 **47 U.S.C. §227(b)**

20 40. Plaintiff repeats and incorporates by reference into this cause of action
21 the allegations set forth above at Paragraphs 1-27.

22 41. The foregoing acts and omissions of Defendant constitute numerous
23 and multiple knowing and/or willful violations of the TCPA, including but not
24 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
25 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

26 42. As a result of Defendant's knowing and/or willful violations of *47*
27 *U.S.C. § 227(b)*, Plaintiff and the Class members are entitled an award of \$1,500.00
28 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*

227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

43. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

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FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

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JURY DEMAND

36. Pursuant to her rights under the Seventh Amendment to the United States Constitution, Plaintiff demands a jury on all issues so triable.

Respectfully Submitted this 1st Day of May, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff